**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re applications of:

Joseph R. Byrum et al.

Appln. No.: 09/531,113

Filed: March 22, 2000

For: Nucleic Acid Molecules and Other Molecules Associated With Plants

Art Unit: 1634

Examiner: Chakrabarti, Arun K

Atty. Docket: 38-21(15761)B

Commissioner for Patents
Washington, DC 20231

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(Printed name of person signing this certificate)

Gracie Williams
(Signature)

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# Response to Restriction Requirement

Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Office Action mailed November 5, 2002, Applicants submit the following remarks.

## *Remarks*

The application presently contains claims 1-7. In the Office Action mailed November 5, 2002, the Examiner required restriction to one of the following inventions under 35 U.S.C. § 121:

Group I: Claim 1, drawn to polynucleotides and compositions containing same, classified in class 536, subclass 23.1;

Group II: Claim 2, drawn to polypeptides, classified in class 530, subclass 350; and

Group III: Claims 3-7, drawn to a transgenic plant, classified in class 800, subclass 278.

Applicants respectfully traverse the restriction requirement, and provisionally elect Group I (claim 1 drawn to SEQ ID NO: 5981) for further prosecution.

Applicants submit that the complete examination of the application would be handled most expeditiously by treating all of the pending claims as a single entity. As Section 803 of the MPEP directs, "[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." Applicants respectfully submit that the Examiner has not shown that a search and examination of the entire application would cause a serious burden. Rather, a serious burden would arise if the application were restricted.

Applicants submit that the restriction requirement is inappropriate. For example, Applicants contend that, at least, Group I and Group II should be examined simultaneously because they are related as polynucleotides and polypeptides encoded by polynucleotides comprising SEQ ID NO: 5981. Accordingly, examination of Group I and II together would pose no undue burden to the Examiner. Furthermore, Applicants submit that restriction to a single nucleotide sequence is improper and Applicants believe no serious burden would result by the search and examination of at least ten nucleotide sequences. Applicants disagree that each nucleotide sequence in the application is necessarily a patentably distinct species, but provisionally elect the species of Group I (polynucleotides and compositions containing the same represented by SEQ ID NO: 5981) for further prosecution.

Based upon the foregoing, Applicants submit that the restriction requirement is improper and therefore should be withdrawn. To facilitate prosecution, however, Applicants have provisionally elected, with traverse, Group I (claim 1 drawn to SEQ ID NO: 5981).

Should the Examiner have any questions regarding this application, the Examiner is encouraged to contact Applicants' undersigned representative at (314) 694-3602.

Respectfully submitted,

Lawrence M. Lavin, Jr. (Reg. No. 30,768)

DATE: 1/23/03

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